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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,446	03/25/2004	James Huang	040139	4859

23850 7590 04/05/2006

ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP  
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WASHINGTON, DC 20006

EXAMINER
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PIZIALI, ANDREW T

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/808,446

Applicant(s)

HUANG ET AL.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4, 5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed on 1/27/2006 has been entered. The examiner has withdrawn the rejections of claims 1-3 and 6 based on the cancellation of claims 1-3 and 6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,162,149 to Reaney in view of anyone of USPN 4,863,788 to Bellairs et al. (hereinafter referred to as Bellairs) or USPN 5,026,591 to Henn et al. (hereinafter referred to as Henn).

Regarding claims 4-5 and 7-9, Reaney discloses a material for clothing comprising an asymmetric porous PTFE membrane for clothing comprising a dense skin layer and a continuously foamed porous layer (see entire document including column 1, lines 5-55, column 2, lines 35-61, and Figure 1). Reaney discloses that the fabric is laminated on the dense skin layer of the asymmetric PTFE membrane using an adhesive that flows through the continuously foamed porous layer (see Figure 1 and the paragraph bridging columns 4 and 5).

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Reaney discloses that the invention relates to breathable waterproof fabrics (column 1, lines 5-30) and that the porous PTFE may be adjacent a fabric (column 3, lines 12-17), but does not mention specific fabrics. Bellairs and Henn each disclose that it is known in the art of breathable waterproof fabrics to use woven or nonwoven fabrics of polyester, nylon, or cotton (see column 3, lines 53-68 of Bellairs and column 3, lines 22-27, column 6, lines 65-66, and the Examples). Considering that Reaney is silent with regards to specific materials, it would have been necessary and thus obvious to look to the prior art for conventional materials. Bellairs and Henn each provide this conventional teaching showing that it is known in the art to use woven or nonwoven fabrics of polyester, cotton, or nylon. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric from woven or nonwoven fabrics of polyester, cotton, or nylon, as taught by Bellairs or Henn, motivated by the expectation of successfully practicing the invention of Reaney.

Regarding the currently claimed contact angle of water to the surface of the skin layer and the claimed diffuse reflectance of light of the skin layer, considering the identical skin layer of Reaney, a thermally treated dense skin layer of PTFE (column 4, lines 20-27), compared to the currently claimed skin layer, it appears that the skin layer of Reaney inherently possesses the currently claimed properties.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly

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or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 7 and 9, Reaney discloses that the porous PTFE membrane may be obtained according to the teachings of USPN 3,953,566 and USPN 4,187,590 (column 3, lines 57-64). The cited documents obtain porous PTFE by drawing in a biaxial direction.

Regarding claims 8 and 9, Reaney discloses that the porous PTFE may have a thickness of between 10 and 100  $\mu\text{m}$  (column 3, lines 57-64).

#### ***Response to Arguments***

4. Applicant's arguments filed 1/27/2006 have been fully considered but they are not persuasive.

The applicant asserts that Reaney does not teach a fabric laminated on the dense skin layer because the fabric does not come into contact with the dense skin layer. The examiner respectfully disagrees. The current claims do not require the fabric layer to come into contact with the dense skin layer. The specification even teaches that the PTFE membrane may be laminated onto a fabric by an adhesive interlayer (see page 12, lines 12-20). Therefore, considering that Reaney discloses that the fabric is laminated on the dense skin layer of the asymmetric PTFE membrane using an adhesive that flows through the continuously foamed porous layer (see Figure 1 and the paragraph bridging columns 4 and 5), the article disclosed by Reaney reads on the current claims.

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*Conclusion*

5. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

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